

March 19, 2014

By Electronic Mail and Hand Delivery

Arthur A. Elkins, Jr. (2410T)
Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: #2014-44 – Bias Trumps Science: Second Update to Request For Investigation Concerning
EPA Bristol Bay Watershed Assessment

Dear Mr. Elkins:

I am writing on behalf of Northern Dynasty Minerals Ltd., owner of the Pebble Limited Partnership (“PLP”), to apprise you of what we have discovered from the completion of our review of the heavily-redacted emails that EPA produced in response to PLP’s Freedom of Information Act requests. EPA’s production leaves many gaps in this story, but the emails that escaped withholding and the words that escaped redaction reveal an Agency ecologist who believed in 2008 that mining the Pebble deposit would bring development that would harm salmon in the Bristol Bay watershed. He also knew that a mine would need a Clean Water Act Section 404 permit and believed that EPA could veto it, so he set out to garner support for a veto.

This EPA ecologist, Phillip North, initially recruited his EPA colleagues to support his position, then expanded his efforts to include the U.S. Fish and Wildlife Service. As more EPA personnel—both at Region 10 and at Headquarters—supported his efforts to oppose a Pebble mine, they brought mine opponents into EPA’s inner circle and exchanged anti-mine strategy with them. Eventually both EPA Region 10 and EPA headquarters secretly gave those groups unbridled access to EPA’s thinking and strategy. In the meantime, groups that might favor the mine—including the State of Alaska—were kept ignorant of the ongoing strategy discussions with mine opponents. EPA’s one-sided embrace of anti-mine information resulted in a grossly biased watershed assessment¹ structured to support the mine veto that Mr. North had been advocating since roughly 2008. Imbalance in access nurtured imbalanced policy—which

¹ The final document, entitled “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” (EPA 910-R-14-001A; January 2014) (“the Final Assessment”), was issued on January 15, 2014.

produced an imbalanced assessment report. We hope that an investigation will cast sunlight on this secret process, which produced a biased document unworthy of the Agency that produced it.

1. Introduction

EPA claims that it initiated the Bristol Bay watershed assessment process in response to petitions by tribes asking EPA to veto mining of the Pebble Deposit in Southwest Alaska. Documents obtained under the Freedom of Information Act offer a far different picture of the origin of this process. This letter further describes how the 404(c) process actually began – long before the tribes formally requested it – and how EPA’s intimate dealings with ENGOs and 404(c) advocates were an integral and secret part of the process.

Unfortunately, major gaps in the documents produced under the FOIA request make it impossible to get a complete picture of the EPA’s activities. For example, the EPA employee directly responsible for launching the EPA 404(c) veto effort was an EPA ecologist working in Alaska, Phillip North. The section of this letter immediately below covers the 22-month period from July 2008 to May 2010, when Mr. North was aggressively pushing his colleagues to pursue a 404(c) veto of a Pebble mine. During this same period there are two seven month gaps, each with no emails at all from Mr. North who, by all other indications, was actively pursuing a Pebble veto. Similarly, we know that the private lawyer most aggressively pursuing a Pebble veto was Mr. Geoffrey Parker, and we know that he used Mr. North’s home email at least once to send him a memo about Pebble strategy. We know this only because Mr. Parker evidently made a mistake and forwarded the same email to another EPA employee, thus (probably inadvertently) putting evidence of his use of Mr. North’s home email into EPA’s own email records.

Despite these gaps, the information that can be gleaned from the documents that EPA produced underscores the need for the Inspector General to investigate and for EPA to produce documents that it withheld from disclosure.

2. Phillip North Launches “my 404 review” in 2008

EPA ecologist Phillip North, one of the authors of the Bristol Bay Watershed Assessment, was working on what he called “my 404 review” nearly two years before the tribes petitioned EPA to initiate the 404(c) process. The initial tribes’ request for a 404(c) process was sent to EPA on May 21, 2010 and received on May 25, 2010. EPA announced plans for the Bristol Bay Watershed Assessment, citing the tribes’ request, on February 7, 2011.

Mr. North was an ecologist in the Aquatic Resources Unit (ARU) in the Office of Ecosystems, Tribal and Public Affairs at EPA Region 10. His exploration of an EPA veto of a Pebble mine permit was already ongoing by June 16, 2008, when he wrote to EPA Region 10 toxicologist Jean Zodrow in Seattle asking her to review a report on copper toxicity to salmon. “It has bearing on my 404 review,” North wrote. [Ex. 1] The report was cited in a 50-page law

review article by Geoffrey Parker and others² which North received the same day from EPA mining coordinator Patricia McGrath. North's email to Ms. Zodrow was also copied to John Pavitt in the EPA Office of Compliance and Enforcement in Anchorage. The FOIA production does not include a response to North.

On August 20, 2008, Mr. North wrote Ms. McGrath asking if she was planning a mining retreat so he could discuss Pebble 404 issues in a "mini-retreat" devoted to Pebble. On August 26, McGrath replied that she was not planning a retreat but asked what he wanted to discuss. North replied that he would like to discuss Pebble issues "in collaboration with the other Regional experts involved . . . to identify areas where we are confident in our position, or at least direction, and areas where we are not . . ." [Ex. 2] He concluded that "[t]he 404 program has a major role. I would like to get the benefit of hearing what other EPA folks are thinking." [Ex. --] Thus North was actively investigating the possibility of a Section 404(c) veto 21 months before the tribes filed the first 404(c) petition and 2 ½ years before EPA announced it was embarking on the Bristol Bay Watershed Assessment.

In November 2008 a few people at EPA recognized that because they would need to make regulatory decisions about the Pebble mine, EPA should remain neutral and unbiased about this subject. Mike Gearheard of EPA Region 10 wrote that putting the film about Bristol Bay entitled "Red Gold" on the agenda of Region 10's Executive Team meeting in December 2008 "could give the appearance that Region 10 is not remaining objective and unbiased in our important permitting role. Also, the pro-mining interests might seek to have equal time on our agenda." (Ex.—[11/4/08]) Ms. McGrath replied "I don't see a need for the [Executive Team] to view this film. The main reason being that we do not yet have a regulatory role in Pebble. The Pebble Partnership has not developed a firm project description. No permit applications have been submitted . . . I agree with your concern that we not appear to be favoring either side . . . The Pebble team and our mining team has strived to remain neutral amid all the controversy." In all of the EPA email we have reviewed, the foregoing exchange is the *only* expression of concern that EPA should remain objective and unbiased. The rest of the history shows an Agency astonishingly comfortable taking the anti-mine side, catering to anti-mine activists, and steeping itself in anti-mine advocacy.

On December 31, 2008, Mr. North again proposed a retreat in an email to Pavitt: "Any thought on the retreat we discussed when I was there?" [Ex. 3] There is no response in the record.

On January 8, 2009, Mr. North revealed that he was certain that a Pebble mine would lead to catastrophe. Repeating his concerns about tailings, North wrote, "Over time it seems that the likelihood of a catastrophic failure becomes a certainty" and he envisioned harm that would extend "to the food chain of the North Pacific." In this email to Alaska Department of Fish and Game biologist Ted Otis and copied to Phil Brna, a biologist for the U.S. Fish and Wildlife

² Pebble Mine: Fish, Minerals and Testing the Limits of Alaska's "Large Mine Permitting Process." Geoffrey Y. Parker, Frances M. Raskin, Carol Ann Woody, Lance Trasky. Alaska Law Review Vol. 25:1. 2008.

Service, and to EPA's Pavitt, North concluded: "We probably ought to start big (North Pacific) then work back to a consensus on what the extent of effects are likely to be." [Ex. 4]

Considering Mr. North's activism inside the agency, there is a surprising absence of communications by North from January through July 2009. On August 17, 2009, North again proposed a retreat to discuss subjecting Pebble to a 404(c) veto. He wrote to EPA Alaska chief Marcia Combes and to Michael Szerlog, the Region 10 manager for North's Aquatic Resources Unit, proposing the 404(c) discussion as part of a Region 10 retreat in Seattle. North proposed adding an entire day at the beginning, on September 16, to discuss the Chuitna and Pebble Mines in relation to NEPA, NPDES and 404 issues. North proposed that he would lead the 404 discussion, including "the EPA position" and "appropriate action in response to our position."

As you know, I feel that both of these projects merit consideration of a 404C veto. We will discuss this from a technical perspective and staff perspective at these meetings. [Ex. 5] (emphasis added) Apparently this was not the beginning of the discussion, as evidenced by North's opening ("As you know..."). The opening phrase makes EPA's failure to produce any documents written in the months preceding this email worthy of further investigation.

Mr. North's bosses accepted his proposal for a special one-day meeting on September 16, 2009 in which he would lead the discussion on 404(c) issues. On August 24, 2009, North sent the agenda to the mining team. [Ex. 6]

The retreat featured a PowerPoint presentation by Mr. North – a presentation that was not produced by EPA under the FOIA request. North himself referred to the PowerPoint presentation in a September 28, 2009 email to Mr. Pavitt and Ms. McGrath in which he passed along information from the NGO Skytruth, which was the source of the Pebble footprint North used in his presentation. [Ex. 7]

On October 13, 2009, Mr. North set up a management briefing and discussion about Pebble for November 12, 2009. [Ex. 8] The announcement includes a complete redaction of the section called "Personal Notes."

Then Mr. North's communications disappear from the email traffic for months, although the fruits of his labor appear in top EPA briefings in January and February 2010 highlighting the future 404(c) option.

On May 12, 2010, before Mr. Parker submitted the tribe's petition, Mr. North emailed Parker saying: "Hi Jeff.³ The PLP [Pebble Limited Partnership] web site lists the following Bristol Bay tribes as having passed resolutions favoring the mine. Do you know otherwise?" [Ex. 9] That North would ask Parker for information about tribes apparently favoring the mine indicates both that North was taking the initiative to identify public allies and opponents, and that

³ Parker signed the 404(c) request on behalf of the tribes Geoffrey Parker, but in his emails he consistently uses Jeff Parker.

he and Parker enjoyed a close working relationship that extended to this subject, which should have been outside Mr. North's job description.

In the days immediately before and after tribes submitted their petition prepared by Mr. Parker, EPA produced no communications by North.

On May 24, 2010, Mr. Parker emailed the 404(c) petition to EPA attorney Cara Steiner-Riley. On May 25, she forwarded it to North and several others. [Ex. 10] Top EPA officials sent word of the petition to management that same day. [Ex. 11]

3. North's Efforts Refine EPA's 404(c) Strategy

In the months immediately following the six-tribe petition, Mr. North was actively encouraging tribal involvement and stepping up his crusade for 404(c) action.

Mr. North's next known communication with Mr. Parker is a June 9, 2010 email in which North thanked Parker for sending him items which North described as a "strong argument for a broad approach to 404(c) and to separate it from the Pebble project. [Ex. 12]

On June 25, 2010, Mr. North wrote Richard King, administrator of the Curyung Tribal Council (one of the original six tribes), with a copy to Parker, encouraging this outside group to actively pressure his agency to oppose the mine. North wrote: "Tribes have a special role in Pebble issues because of government-to-government relations. EPA takes that very seriously. I encourage you to develop that relationship as much as you can. I look forward to talking with you more in the future." [Ex. 13]

On August 12, 2010, the Bristol Bay Native Corporation filed its own 404(c) request, and BBNC lawyer Peter Van Tuyn sent it directly to North with a message indicating that he expected to collaborate with North: "I look forward to catching up with you in the coming days."

Mr. North's reply was not that of a dispassionate scientist seeking objective information, but someone seeking an outside ally for a 404(c) veto action: "Hi Peter, We have been discussing 404(c) quite a bit internally at all levels of EPA. This letter will certainly stoke the fire. I look forward to talking with you in the near future." [Ex. 14]

When Mr. North wrote this reply in August 2010, he had been generating discussions about a Pebble 404(c) veto for more than two years.

On September 14, 2010, Mr. North wrote one of the most revealing descriptions of his approach. In an email to Richard Parkin, the EPA Pebble team leader, and ARU manager Michael Szerlog:

I hope everyone at this point has gotten their minds around the idea that our focus is on the resource and not on any particular project. To that end, here are some thoughts about how I might approach a 404(c) action. The landscape area that supports the resource we

are discussing is the Bristol Bay watershed. So initially it seems that area should be the target of our 404(c) action. During the process of developing our proposed determination we would refine our target area based on the need for protection.” [Ex. 15]

Then before going into details, Mr. North prefaces his argument: “Not to be predecisional” North, of course, has been “predecisional” for more than two years, when he began pushing the 404(c) issue and openly declared that EPA should use its veto power. But by September 2010 he was talking in terms of “our 404(c) action” as a given.

What makes this email particularly noteworthy are the issues Mr. North brings up next. His ultimate goal is to prevent *all* development in the Bristol Bay watershed. Stopping the mine is the frontline of his broader battle against mining, roads, and residential and commercial development in the watershed.

So far there are two types of development that have been identified in State of Alaska planning documents that could have significant adverse effects on aquatic resources. The first is what drew our attention here, mining. The second is road building. The State of Alaska has outlined an extensive road system that does not currently exist. If it was constructed as proposed, it would cause significant adverse effects.

. . . . it is the accumulation of mines and highways, and all the associated residential and commercial development enabled by the larger scale developments, that will ultimately cause the demise of the resources we are targeting.

So a 404c that targets the primary habitat of the resource we are trying to protect, salmon, is a logical approach. First at the specific habitat level by prohibiting discharge in stream channels and the riparian (or adjacent) wetlands that most directly support them. Second by initially addressing Bristol Bay as a whole then narrowing to those watersheds that are at risk.

This email carries the subject line: “Thoughts for the Bristol Bay discussion tomorrow.” EPA’s FOIA production offers no agenda, no follow-up email and no other communication about this discussion of “our 404(c) action.”

On the same day that Mr. North sent this veto-strategy email to his EPA management, he forwarded it to Mr. Parker, an anti-mine advocate outside the agency.

4. Parker and North Shared Information Privately

The working relationship between Mr. North and Mr. Parker was a two-way street and involved more than North forwarding internal EPA communications to Parker.

On September 22, 2011, Mr. Parker sent an email to Palmer Hough of the EPA Wetlands Division in Washington, D.C. with two documents attached: Parker’s own draft “History of Conservation and Land Use Planning Efforts in the Kvichak and Nushagak Drainages” and a

memo entitled, "Assuming that EPA makes a 404(c) determination regarding the Kvichak and Nushagak drainages, what can make it stable under future federal administrations?"

Mr. Parker's email to Hough was a forwarded message that he had sent on September 21, 2011 to "Phil and Amanda." [Ex. 16] Amanda is Phil North's wife. This email originally went to North's home email account and nowhere else.

Many emails sent by Mr. Parker have redactions. This email suggests that Parker used North's home email address when he wanted to communicate privately with North, off the federal communications grid. These emails, between Parker and North's home, would not turn up during a FOIA production, and we assume that this was the reason for using a private email – to keep the material private.

The only reason we have this North-Parker exchange via North's private email is that it was forwarded to Palmer Hough. In fact, all email correspondence relevant to Mr. North's activities concerning Pebble to or from Mr. North's private email account should have been produced. The Inspector General should investigate the withholding of such documents. The few North-Parker emails that were produced show what appears to be a close working relationship between North and Parker—the lawyer who filed the initial 404(c) petition for the six tribes.

On July 17, 2013, The Redoubt Reporter published a feature article on Mr. North highlighting his significant personal role in the 404(c) process.⁴ North had just retired from EPA and was preparing to embark on an around-the-world sailing trip. Scrolling down beyond the end of the online article about North, there is a comment by Parker: "We all owe him a lot. Best sailing. Jeff." [Ex. 17]

5. EPA Briefings Highlight 404(c) Before the Tribes Petition EPA

On January 13, 2010 – 5 ½ months before EPA received the tribes' 404(c) request – EPA Region 10 briefed Administrator Lisa Jackson about Pebble, highlighting the 404(c) veto option. [Ex. 18]

On January 26, 2010, Susan Bromm, Director of the EPA Office of Federal Activities, which coordinates review of all federal environmental impact statements and compliance with NEPA, requested a briefing. [Ex. 19] Like Jackson, her February 2, 2010 briefing highlighted the 404(c) veto option. [Ex. 20]

On June 8, 2010, less than two weeks after EPA received tribes' 404(c) request, Mr. North was in Seattle to brief Regional Administrator Dennis McLerran with the "Key Message"

⁴ <http://redoubtreporter.wordpress.com/2013/07/17/full-phil-epas-north-sets-sail-after-eventful-career-helping-launch-bristol-bay-pebble-mine-assessment/>

that “EPA will be heavily involved in this project” through NEPA review, 404 oversight and NPDES oversight. And, as in the earlier briefings prior to the tribes’ petition, North highlighted this future option: “404(c) veto either pre-emptive, during EIS, or after EIS.” [Ex. 21]

6. EPA Sought Veto Support From the U.S. Fish & Wildlife Service

Mr. North’s role as a 404(c) advocate within EPA spilled over into other federal agencies, including the FWS. As a result, FWS was suddenly deeply enmeshed in EPA’s 404(c) strategy and activities. North recruited FWS officials to his 404(c) crusade months before EPA announced it would conduct a Bristol Bay watershed assessment.

The Anchorage Fish and Wildlife Field Office (AFWFO) produced a discussion paper dated October 1, 2010 stating that EPA had decided to launch the 404(c) process; that it had enlisted the support of the FWS Region 7 (Alaska); and that it was only a matter of when (not whether) EPA would act. The 3-page FWS paper – dated more than four months *before* EPA’s public announcement – was titled “EPA to Seek Service Support *When They Use* Section 404(c) of the Clean Water Act.” [Ex. 22] (emphasis added)

On October 18, 2010, Brna consulted with Mr. North, who requested up to two hours for EPA to brief the FWS regional director. FWS Deputy Assistant Regional Director Steve Klosiewski told Brna and other FWS officials, “We need a short concise briefing that allows time for meaningful discussion. *No need to talk about how bad the mine would be because everyone understands this.* We need to focus on FWS role and authorities and what EPA wants from us. We should know this before the meeting and discuss beforehand.” (emphasis added) On October 20, 2010, FWS Regional Coordinator for Conservation Planning Assistance Frances Mann said the 2-hour briefing was necessary to discuss details of what she repeatedly referred to as the “404(c) action”:

The briefing will be given by EPA, not the Service. We have already given our briefing to Geoff, he said he was convinced, and directed us to set up the formal briefing with the RDs of the EPA and the NPS (a side note is that he also asked us to set up a second briefing with the Alaska Native delegation that are petitioning EPA to undertake the 404(c)).

The EPA briefing does not focus on the mine and how bad it is. Rather – it focuses on the uniqueness and global importance of the Bristol Bay watershed, particularly the importance of salmon to the economy, the people, etc. It also provides info about other non-salmon resources in the area. *The briefing describes the EPA criteria for taking the 404(c) action.* Pebble and other mines are mentioned as significant threats to the area, but the presentation does not go into detail about the adverse effects of mining.

The briefing would be essentially the same one that has been given to EPA’s Regional Administrator in Seattle, as well as the Deputy Administrator (in Wash DC). According to Phil North, those briefings/discussions took about 1.5 hours. The rationale behind the

2-hour time block is that we don't know what sorts of questions and discussion may need to occur between the 3 RDs (Sue Masica, Marcia Combes and Geoff), but it seems better to be safe and allow for more time rather than less. *The EPA will be looking for a statement of support from Geoff and Sue as to the merits of the 404(c) action. This is their time to tell a convincing story about why 404(c) action would be appropriate.* I think this is actually the type of information that Geoff and the NPS will need when asked by Rowan, Tom Strickland, the public and others about "why are you in support of the EPA's action?"⁵ [Ex. 23] (emphasis added)

These FWS statements -- the October 1 discussion paper and the October 20 email by Ms. Mann -- confirm that EPA had decided to pursue a 404(c) veto *before* it began its watershed assessment.

Mr. North conducted the briefing described above in December 2010 for the FWS and NPS regional directors. On February 25, 2011, while preparing for FWS meetings, Anchorage Field Office Supervisor Ann Rappoport wrote Phil Brna asking for North's presentation: "I believe there were some good facts in Phil North's presentation last Dec. to FWS and NPS Regional Director's [sic]. Phil -- I believe you have that -- can you pull out those slides with info on species (it also included terrestrial ones), numbers, value of commercial and recreational fisheries, portion of world wild salmon fisheries, etc. and forward them to Larry [Bright, FWS Chief of Conservation Planning Assistance]?" [Ex. 24] Brna was one of two FWS officials who contributed to the EPA watershed assessment report. North's presentation was not produced by EPA or FWS under the FOIA documents request.

On February 24, 2011, FWS agreed to a request from Trout Unlimited for a meeting at FWS headquarters to discuss "the use of CWA Section 404c to protect the watershed from the mine proposal." [Ex. 25] When FWS headquarters notified FWS Regional Coordinator for Conservation Planning Assistance, Frances Mann, that it had agreed to the Trout Unlimited meeting, her response was: "wow! Great news! What do you need from us?"

To prepare FWS officials, Ann Rappoport sent out the earlier October 1, 2010 discussion paper: "EPA to Seek Service Support When They Use Section 404(c) of the Clean Water Act."

FWS emails in March 2011 show the service engaged with key 404(c) advocates and strategizing about how to bring their cause all the way up to the secretary level.

⁵ The names in this email refer to the following officials in the order they are mentioned: Geoff Haskett, Alaska Regional Director the USFWS; Sue Masica, Alaska Regional Director for the National Park Service; Marcia Combes, Alaska EPA Operations Director; Rowan Gould, Deputy Director of the USFWS; Tom Strickland, Assistant Secretary of the Interior for Fish and Wildlife and Parks.

7. 404(c) Advocates – EPA Partners and Insiders

The FOIA production shows almost constant contact between EPA and environmental nongovernment organizations, with private meeting, calls, briefings and document exchanges so frequent that they became part of the EPA routine. The tone of the communications portrays EPA and the ENGOs as partners with a common goal. What likely began as a lobbying effort soon became an intimate working relationship.

The ENGOs began working with EPA in 2009. By the time the 404(c) petitions were filed in 2010, the ENGO-EPA relations had escalated to the point where there were almost constant briefings and two-way exchanges. ENGOs and EPA were sharing information, patting each other on the back with appreciation, and moving in lock-step.

Even the foundations funding the ENGOs got into the act, scheduling meetings with EPA officials at headquarters to lobby for their grantees' cause.

What began as ENGO requests for meetings evolved into EPA invitations to the ENGOs for meetings and briefings. These activities were private and they exclusively involved 404(c) advocates. When EPA conducted its own internal briefings and communications, it freely shared these materials with the ENGOs.

Phil North frequently invited Trout Unlimited Bristol Bay Campaign Director Shoren Brown to meet with him and even to join him for field research training. Geoffrey Parker sent advice to EPA on policy, law and tactics. Lobbyist and former EPA official Wayne Nastri did the same, offering regular advice to his former colleagues, which they graciously accepted. In 2010 The Wilderness Society was copied on almost every EPA email that went to tribes and key players. The Natural Resources Defense Council scheduled meetings with its former attorney Nancy Stoner who left NRDC to become EPA assistant administrator for water. Some of the most vocal 404(c) activists, such as Shoren Brown, Robert Waldrop, Rick Halford, John Holman and others, insinuated themselves into the process in numerous ways. ENGOs made sure EPA got the reports they produced or paid for, including drafts, embargoed reports and materials not otherwise released or reviewed independently. EPA itself was instrumental in encouraging ENGO contacts with other agencies, particularly the U.S. Fish and Wildlife Service.

Although many of these ENGOs, their principals, their lawyers and their lobbyists worked together, this section will attempt to describe the activities of key advocates separately because of the sheer volume of material. This is not a complete accounting of EPA-ENGO meetings, and gaps in the FOIA record prevent a complete listing. The following summary focuses on the key early meetings between EPA and the most active ENGOs. It spotlights meetings in the critical formative months and emphasizes on the period leading up to the public EPA 404(c) announcement in February 2011.

8. ENGOS & EPA: 2008 – 2009

The earliest events in the FOIA record involving EPA and the 404(c) advocates occurred in 2008. The 2008 law review article by Parker and others figured in the first email referring to the 404(c) project which North sent to the EPA toxicologist in July 2008 as described above.

The “Save Bristol Bay” web site, operated by Trout Unlimited, and other anti-Pebble groups began promoting a film called “Red Gold” in 2008. The producer approached EPA about a showing in October 2008, and EPA showed interest. Some at EPA expressed concerns about the appearance of bias if EPA were to schedule a meeting that including a movie critical of Pebble and produced by Pebble opponents.

On November 7, 2008, EPA Alaska Mining Coordinator Patricia McGrath wrote her colleagues concerned over an advocacy group, Save Bristol Bay, sponsoring the film. She also said she saw no need for the executive team to view the film because “we do not yet have a regulatory role in Pebble. The Pebble Partnership has not developed a firm project description. No permit applications have been submitted and it is unlikely we will begin NEPA and permitting before late 2011.” [Ex. 26]

Ms. McGrath went on to say that she agreed with concerns “that we not appear to be favoring either side in the controversy surrounding this mine.” She suggested, “One option might be to view this film as a brown bag event. Another option would be to present, at the ET meeting, materials that describe other points of view.”

Mr. North, of course, by this time was already working on his 404(c) plans and it wouldn’t be long before EPA dropped all pretense of impartiality and began courting ENGOS. Meanwhile, EPA resolved that debate about watching the movie on EPA time by scheduling a February 12, 2009 “Brown Bag showing of Red Gold film.” [Ex. 27]

On June 30, 2009, Mr. Parker met with EPA and sought to become involved with EPA and the Army Corps of Engineers in a future environmental impact statement for Pebble. Parker was already representing the six tribes in a challenge to the state’s 2005 Bristol Bay Area Plan. On September 16, 2009, Parker asked EPA who he should contact to “commence initial discussions” on having the tribes work as “cooperating agencies” with EPA. He was referred to EPA Pebble Project Manager John Pavitt. [Ex. 28]

On October 30, 2009, David Chambers of the Center for Science in Public Participation (csp2) contacted EPA to set up a Pebble discussion. EPA agreed, and on November 11, 2009, Chambers wrote that he was also working with other groups: “I work with a number of NGOs to look at the technical aspects (geochemistry, hydrology, mining and processing, fisheries) of the Pebble mine.” [Ex. 29]

Mr. Chambers told EPA he was bringing his colleague Kendra Zamzow along with four others – all of them active Pebble opponents and 404(c) advocates: Carol Ann Woody, Jeffrey Parker, Luki Akelkok and Bobby Andrew.

Ms. Woody is a fisheries biologist whose company Fisheries Research and Consulting works for Pebble opponents. Parker and Woody were co-authors of the 2008 law review article against Pebble, the article North sent to EPA toxicologist Jean Zodrow in July 2008 for what he called “my 404 review.”

Mr. Akelkok and Mr. Andrew both served as directors of the ENGOs Nunamta Aukulestai and Bristol Bay Heritage Land Trust. Mr. Akelkok is president of Ekwok Village Council, one of the six tribes represented by Parker in the 404(c) petition. Akelkok chaired the 2008 Clean Water Initiative, a campaign funded largely by Robert Gillam and intended to prevent Pebble development. Mr. Andrew is treasurer the Renewable Resources Foundation, which was founded by Gillam and along with Gillam is the sole source of money for the latest anti-Pebble ballot initiative, Bristol Bay Forever.

On October 5, 2009, EPA mining coordinator Patricia McGrath emailed North and others to report that “TU [Trout Unlimited] folks are meeting with HQ water office in a couple weeks. Not sure if we will be asked to participate or provide information.” [Ex. 30] Then, as a follow-up, on November 4, 2009, TU Bristol Bay Campaign Director Shoren Brown wrote that he had met with EPA in Washington, D.C. and wanted to meet with Region 10 officials. [Ex. 31]

The FOIA record has nothing more on any of these 2009 meetings.

9. Attorney Geoffrey Parker

FOIA documents show that Geoffrey Parker was far more engaged in the entire EPA 404(c) process than filing a petition for six tribes. Mr. Parker became a de facto EPA advisor, regularly sending writings and suggestions to EPA to further the 404(c) process.

On May 7, 2010, Mr. Parker wrote an 8-page letter to Regional Administrator Dennis McLerran focusing on his definition of a 404(c) “unacceptable adverse effect” of Pebble mine development on such things as the sport fishing economy and subsistence. Parker said the letter was accompanied by a request from “several” tribes to initiate a formal 404(c) assessment. [Ex. 32] Parker’s May 7, 2010 letter was copied to two people: U.S. EPA Administrator Lisa Jackson and Region 10 ecologist Phil North.

Two parties that were *not* informed of the petition by either the petitioners or by EPA were the direct targets—the State of Alaska, which owned the land, and PLP, which leased the mineral rights. This was no accident. EPA and the ENGOs worked together to keep the petition secret from the State and PLP until a story in the *Los Angeles Times* broke the secret.

On June 11, 2010, Mr. Parker sent EPA “contact information for my tribal and other clients for purposes of arranging any meeting responsive to Mr. Akelkok’s invitation of April 14, 2010 to Mr. McLerran, regarding the potential Pebble mine, the Tribes’ 404(c) request, and

related matters.” Parker said he had spoken with North and was expecting a response to the April meeting request. [Ex. 33]

In addition to the six tribes, Mr. Parker’s 404(c) client contact list included the Trout Unlimited Alaska Director Tim Bristol and David Harsila, President of the Alaska Independent Fishermen’s Marketing Association (AIFMA).

On June 22, 2010, Mr. Parker asked EPA attorney Cara Steiner-Riley to tell him how her ENGO meeting went with Trout Unlimited and David Chambers of csp2. She agreed to brief him. [Ex. 34]

On June 28, 2010, Mr. Parker wrote Ms. Steiner-Riley, copied Mr. North, and suggested a 404(c) strategy: “One option that EPA might consider is to commence a 404(c) process based on the 2006 applications.” He was apparently referring to Pebble exploration applications on file with the Alaska Department of Natural Resources. [Ex. 35]

On July 14, 2010, when Mr. Parker learned that Administrator Jackson and Mr. McLerran were leading an EPA visit to the region, he jumped in to advise EPA about the meetings on behalf of the petitioning tribes. [Ex. 36] In a July 15, 2010 email, Parker suggested how EPA should handle the meetings:

I understand that if EPA acts under 404(c), then EPA may do so to form a “positive” point of view – i.e., to protect the Kvichak and Nushagak drainages (or the Bristol Bay drainages) from unacceptable adverse effects such as those posed by Pebble mine – rather than from a negative point of view – i.e., to stop Pebble Mine per se. [Ex. 37]

Ms. Fordham’s same-day reply stated that EPA would not be discussing the 404(c) issue. Parker wrote back on July 16, 2010, to get assurances that all six petitioning tribes will be invited, and informed Fordham that it was the 404(c) request itself that precipitated the Jackson-McLerran-EPA visit:

I understand that this meeting is precipitated, at least in substantial part, by the 404(c) letter that these six tribal governments sent to Mr. McLerran and Ms. Jackson, the letter of Mr. Akelkok that invites Mr. McLerran and follow-up efforts of Mr. King, and efforts of EPA officials involved in responding to the Tribes’ 404(c) letter. [Ex. 38]

Also on July 16, 2010, Mr. Parker wrote Ms. Fordham again, complaining that his clients were left out of the EPA visit plans. “I trust this is now being straightened out. Please keep me informed. I recommended that all six tribes that requested 404(c) be invited.” Parker also urged EPA to include other mine opponents: “I also recommend that you include AIFMA and TU, both of which have supported the tribes on 404(c), and have recommended that EPA coordinate with those six tribes.” This time, Parker included North and several other EPA officials in the email.

Mr. Parker's requested guest list may have been adopted by EPA. A new email from Fordham with an update on the visit has a long list of addressees, *but the entire addressee block is redacted* so it cannot be determined whom EPA invited to this meeting. [Ex. 39]

On July 17, Mr. Parker distributed a map of mining claims he received from mine opponent Carol Ann Woody. It apparently went to EPA's distribution list for the Jackson visit as well as to Ms. Steiner-Riley. [Ex. 40] On July 18, 2010, Parker reports that Woody's map was actually prepared by another ENGO, The Nature Conservancy. [Ex. 41]

On July 30, 2010, Mr. Parker wrote Ms. McGrath and Michelle DePass, EPA Assistant Administrator for International and Tribal Affairs who was accompanying Jackson on her visit to Bristol Bay, including the town of Dillingham, where events were scheduled. Parker warned EPA: "I learned this morning that a reporter, Kim Murphy, at the LA Times, is doing a Pebble-related update. She had already learned of the Dillingham meeting and the 404(c) matter." [Ex. 42]

What makes this email so significant is that the tribes' 404(c) petition had not yet been publicly disclosed. Mr. Parker's email suggests that perhaps Jackson herself intended to disclose it at the Dillingham meeting. In fact, even PLP was unaware of the 404(c) petition more than five weeks after Parker submitted it.

Mr. Parker's warning email to EPA about the LA Times and the imminent disclosure of the 404(c) petition included a list of talking points that EPA could use, as could his clients. Parker's No. 1 point: "Tribes have used their government-to-government relationship with the United States to ask EPA to consider commencing a 404(c) public process." (emphasis in the original) Parker said the 404(c) process was "a means to protect fish and game habitat and commercial, subsistence and sports uses of fish and game" and that it was a "highly deliberative process." EPA officials forwarded the email to its upper management.

On August 3, 2010, the LA Times published an article entitled, "Battle over Pebble Mine shifts to EPA."⁶ The article quoted Parker and his various talking points, and the article included a link to the tribes' letter to EPA. *That is how PLP discovered the existence of the 404(c) petition filed by the tribes in May – not from EPA.* Even when the EPA officials were in Alaska, they did not disclose the 404(c) request in meetings with Pebble officials. It was only because the news leaked, because Parker talked about it and because the petition was given to the LA Times that PLP itself learned of its existence.

Mr. Parker's next order of business, according to an August 11, 2010 email, involved setting up a meeting with EPA and the Army Corps of Engineers for August 13. Parker spelled out in detail what he wanted to cover and what he wanted to get as a result. Throughout, there are references to the information that the parties will provide to Parker and the tribes. [Ex. 43] On August 12, 2010, Parker sent out a refined agenda for EPA-Corps meeting. [Ex. 44]

⁶ <http://latimesblogs.latimes.com/greenspace/2010/08/battle-over-pebble-mine-shifts-to-epa.html>

The Bristol Bay Native Corporation filed its own 404(c) request on August 12, 2010, and BBNC lawyer Peter Van Tuyn sent a copy to Parker and Meacham, lawyers the six tribes. Parker then sent the BBNC 404(c) petition to someone at EPA with no message except “fyi”; yet the addressee is inexplicably redacted. [Ex. 45]

On August 23, 2010, Mr. Parker sent a “memo on 404(c)” to Ms. Steiner-Riley stating:

In the preamble that accompanies adoption of 40 CFR Part 231, which implements Section 404(c), EPA expressed its preference for comprehensive advance prohibition whenever appropriate. I am attaching a memo. It asserts that, based on this preference and a host of other reasons, EPA has a responsibility to propose such a comprehensive approach with respect to metallic sulfide mining in the Kvichak and Nushagak drainages of southwest Alaska. [Ex. 46]

Ms. Steiner-Riley followed up by arranging to talk to Mr. Parker about the issue.

Mr. Parker’s next flurry of emails came in January 2011. On January 14, 2011, he replied to an EPA recipient (whose name is redacted) concerning the *Rapanos* case (interpreting the Clean Water Act’s definition of “waters of the United States”). [Ex. 47]

On January 16, 2011, he wrote Steiner-Riley, saying, “I meet with the Tribes on Wed and Thurs. Do you have a few minutes on Tues to brief me on the status of the Tribes’ 404(c) request.” [Ex. 48] On March 18, 2011, Parker wrote again to a recipient (whose name is redacted) making a case for EPA to put four tribal reps, rather than three, on the inter-governmental task force. [Ex. 49] On August 23, 2011, Parker wrote North advising him to check out dust containment provisions for the mine. Parker then forwarded the email to a recipient whose name is redacted. [Ex. 50] On September 9, 2011, Parker wrote to a recipient whose name is redacted: “Are you available for a two-minute phone call?” [Ex. 51]

Then on September 21, 2011, Mr. Parker sent two reports to North at his “Phil and Amanda” home address and then forwarded the material to Palmer Hough. I discussed these reports in a previous letter to you. Parker sent his own 7-page draft “History of Conservation and Land Use Planning Efforts in the Kvichak and Nushagak Drainages.” The other document is a 6-page formal memo entitled, “Assuming that EPA makes a 404(c) determination regarding the Kvichak and Nushagak drainages, what can make it stable under future federal administrations?” These memos show just how closely EPA was working with him and the 404(c) advocates. The depth of the collaboration is stunning.

On February 14, 2012, Mr. Parker showed concern that EPA was not moving fast enough on its 404(c) determination. He wrote Hough, Parkin and North proposing a plan for “how to speed up the current process for the watershed assessment and any 404(c) determination.” [Ex. 52]

Mr. Hough wrote back: "We appreciate your thoughts regarding the schedule for our watershed assessment and any potential future actions. We will take these under advisement." [Ex. 53]

On March 20, 2012, Mr. Parker sent someone at EPA – the name is redacted – a copy of a March 9 letter from the Alaska attorney general. [Ex. 54] On April 10, 2012, Parker sent North, Steiner-Riley and Hough a 2-page memo about a new law review article:

I hope you and others in EPA will find the attached law review article helpful. It is titled: "Section 404(c) of the Clean Water Act and the History of State and Federal Efforts to Conserve the Kvichak and Nushagak Drainages of Alaska." I am the author. Please feel free to copy, distribute or use as you and others see fit. [Ex. 55]

Ms. Steiner-Riley responded: "Thanks, Jeff!" [Ex. 56]

10. Shoren Brown, Trout Unlimited: 2010

On March 24, 2010, Shoren Brown emailed ARU manager Michael Szerlog, saying, "I would like to catch up with you on a number of CWA issues at Pebble." They agreed to talk March 26. [Ex. 57] On April 1, Brown asked to meet with Szerlog and they set a meeting for April 6. [Ex. 58] Two weeks later, Brown was back in Washington, D.C. to meet with EPA officials there. [Ex. 59]

On June 1, 2010, Mr. Brown emailed North saying, "If you're in town, I'd love to catch up." [Ex. 60] This was the first such email in the FOIA record between the two, but obviously they had been communicating. North replied, "Hi, Shoren, I will be in Seattle to brief the RA Sunday through Thursday. Maybe next time."

On June 11, 2010, there were several exchanges between Brown and EPA. First, Brown asked North for "a time to talk so I can update you on upcoming events." North then issued an extraordinary invitation to Brown: "Would you like to come into the field for some research training. We are starting a research project on wetland hydrology. The graduate student who will do most of the work is training a couple of us on collecting data. That will take all day. Otherwise, could we get together in the evening?" [Ex. 61]

Mr. Brown then contacted Kendra Tyler, an assistant to the Region 10 administrator, to set up yet another TU briefing. [Ex. 62]

Mr. North reported back to Mr. Brown on his briefing to the regional administrator: "We briefed Dennis [McLarren] this past Tuesday. There was a somewhat large crowd, many of whom had not had a briefing. It seemed to go well. I think they understand at least the resource issues." [Ex. 63] This was the June 2010 briefing mentioned above.

On June 14, 2010, Mr. Brown emailed a "404c summary" to North, saying, "Phil – this is still in draft form but I thought you might find it informative. I'll make sure and send the final when it's complete." The summary, called "Projects Vctocd Updated" was not included in the FOIA record, and the email shows it was deleted from the reply by North, who answered: "Thanks Shoren. I will look it over. It looks like you will meet with staff in the morning for technical discussions and Dennis in the afternoon. I am hoping to be on the phone for the Tuesday morning technical discussions." [Ex. 64]

The next Trout Unlimited briefing occurred at Region 10 headquarters on June 22, 2010, and included several other ENGO 404(c) activists: David Chambers of the Center for Science and Public Participation; Lydia Olympic of The Wilderness Society; Bob Waldrop of the Bristol Bay Regional Seafood Development Association; Tim Bristol, Trout Unlimited Alaska Director; and Shoren Brown. [Ex. 65] Brown later sent Chambers' PowerPoint presentation to North. [Ex. 66]

On July 16, 2010, Mr. Brown sent a revealing email to Szerlog, copied to North, saying he wanted to talk about the upcoming visit to Alaska by the high-ranking EPA delegation, including Administrator Lisa Jackson. "There are some negative rumors circulating within the tribes and other interest groups working on pebble about the upcoming EPA trip to Alaska. I am happy to help out and circulate the correct information for you to these stakeholders if you would like. Quite frankly – *I am worried that some people may go public and damage TU's ongoing efforts and the productive relationships that have been established to date.*" (emphasis added) [Ex. 67]

On July 22, 2010, Mr. Brown sent an email that appears to be Tami Fordham (the addressee is redacted) who was working on arrangements for Region 10 and the EPA trip, saying, "Thanks for the update. Things are looking good from our end. I got your message re media. We are working to keep quiet honestly but if we do find out the press is coming – I will pass on who and when they plan to arrive." [Ex. 68] EPA was making Brown privy to EPA's plans.

On July 23, 2010, Mr. Brown accepted an invitation to meet with Nancy Stoner, the assistant administrator for water at EPA headquarters, and a former co-director of the water program for the Natural Resources Defense Council. [Ex. 69]

Mr. Brown and Mr. North kept up their dialogue as well. On October 22, 2010, Brown sent North a "Pebble ecological risk assessment" from The Nature Conservancy and offered to connect North with the report's authors. [Ex. 70] A week later, on October 30, 2010, North invited Brown "and his scientist" to come to Soldotna to meet with him. [Ex. 71] North accepted Brown's offer to put him together with The Nature Conservancy to discuss the risk assessment and on December 10, 2010, they made plans to meet. [Ex. 72] A week later, on December 18, 2010, Brown was asking North and Palmer Hough to arrange more TU briefings for early 2011. [Ex. 73]

11. Trout Unlimited Seeks to Discredit Native Corporation Science

On November 1, 2010, Shoren Brown emailed unknown EPA recipients (their names were redacted) seeking to discredit an Alaska Native corporation because it had a contract to conduct scientific studies for Pebble. "APC's subsidiary has financial ties to PLP," Brown wrote. [Ex. 74]

APC is a consolidated village corporation for South Naknek, Port Heiden, Ugashik, Kokhanok and Newhalen. All are in the Lake and Peninsula Borough except South Naknek, which is in the Bristol Bay Borough. The offending item from APC's June 2008 newsletter, which Brown quoted in the email, reads as follows: "APC continues to work at the Pebble site conducting hydrology, water quality and trout telemetry studies. During the month of May, APCS, including APC shareholders conducted hydrology studies and fish capture work in support of telemetry studies to learn the life cycles of trout that spawn in Upper Talarik." APCS makes no secret of its work and its web site lists its numerous science projects.⁷ [Ex. 75]

Trout Unlimited attempted to discredit APCS for conducting telemetry studies of trout.

12. Attack on Mayor Alsworth

On December 4, 2010, the Lake and Peninsula Borough Mayor, Glen Alsworth, wrote a two-page letter to EPA Administrator Lisa Jackson asking her to withhold judgment on a 404(c) veto.

On behalf of the Lake and Peninsula Borough, I am writing you to urge you not to use authority under Section 404(c) of the Clean Water Act to *preemptively* prohibit wetland fill within Bristol Bay. Such a move would disrespect science and could provide a death blow to our villages.

....

A Preemptive Decision Disrespects Science. Tens of millions of dollars of scientific information has been gathered for the mine. Most of it has not been released to the public or to EPA. Some remains to be gathered. There is no reason to make a decision before the scientific information is available. EPA's 404 authority will be just as valid after the scientific information is available as it is today.

[Ex. 76] (Emphasis in the original)

On December 6, a consultant to the borough, Bob Loeffler, emailed the mayor's letter to Jackson and McLerran as well as to Parkin and McGrath with the subject line "Borough Letter concerning 404(c)." Parkin forwarded it to other EPA officials, including North and Hough. Within an hour, Hough forwarded it to Shoren Brown, "FYI." [Ex. 77]

⁷ <http://www.apcservicesllc.com/projects>

On January 6, 2011, anti-Pebble activist John Holman wrote a page-long personal attack against Alsworth and sent it to both Jackson and McLerran, noting that it was in response to the mayor's letter. Holman said Alsworth was the subject of an investigation by the Alaska Public Offices Commission for not disclosing business connections to Pebble. Holman cautioned the EPA administrators against "taking much stock in Mayor Alsworth's personal opinions as he does not speak for the people he represents or the assembly." [Ex. 78]

In fact, Mr. Holman *himself* was the complainant and one of Robert Gillam's lawyers, Scott Kendall, filed the complaint with APOC. In March 2011, APOC dismissed the complaint. Alsworth, elected more than two decades ago, was reelected to a new three-year term in 2012 by a 3-1 margin against a Pebble opponent.

In 2008, Mr. Holman served as treasurer for the Clean Water Initiative largely funded by Gillam. He is the president of Bristol Bay Forever, which is sponsoring a new anti-Pebble initiative. He is a director of the Renewable Resources Foundation, founded by Gillam and which is the only other source of funding for the Bristol Bay Forever initiative besides Gillam. Holman is also the owner of the No See Um Lodge overlooking the Kvichak River.

13. Robert Waldrop

Robert Waldrop was executive director of the Bristol Bay Regional Seafood Development Association representing commercial driftnet fishermen. Until October 2013, Mr. Waldrop also served as vice president and board member of the environmental law firm Trustees for Alaska, which represents the ENGO Nunamta Aukulestai in suits to halt the Pebble project. And until January 2014, Waldrop was president of the Trustees for Alaska Endowment Fund. Waldrop currently serves as treasurer and was president of another ENGO called Alaska Salmon Initiative. He has also been active in an entity called the Bristol Bay Working Group.

EPA took him into the fold with other favored ENGO leaders. Before long, EPA was looking to Mr. Waldrop along with Shoren Brown of Trout Unlimited as useful 404(c) advocates.

On June 20, 2010, Mr. Waldrop wrote EPA Administrators Jackson and McLerran asking that EPA use its 404(c) powers to intervene to stop the mine without waiting for details on Pebble. [Ex. 79]

Mr. Waldrop attached a 7-page document entitled, "The Justification for Preemptive Use of CWA 404(c) to Protect Alaska's Bristol Bay Watershed." He acknowledged that "EPA may need more information," but still argued for action based on the potential for unacceptable adverse impact.

Mr. Waldrop said, "We are committed to working with USEPA as it moves forward in the Pebble Mine 404(c) process." Indeed, Waldrop would become a key player in the unfolding campaign, meeting with EPA officials from Alaska to Washington, D.C. and working with Trout

Unlimited's Shoren Brown to persuade the U.S. Fish & Wildlife Service to support an EPA veto. It was EPA itself that began opening the FWS doors for Waldrop and Brown.

Although Mr. Waldrop mentions fisheries (he heads a fishermen's group), his 7-page "Justification" to EPA has only a limited focus on the salmon resource. Waldrop provided his paper to one of his grant funders, the Gordon and Betty Moore Foundation, which donates millions of dollars to the Bristol Bay cause. The foundation's Wild Salmon Ecosystem manager Aileen Lee provided a copy to Michelle DePass, Assistant Administrator for Tribal and International Affairs at EPA headquarters prior to her trip to Alaska with Jackson.

Mr. Waldrop also wrote DePass on July 23, 2010 and said, "Recently, I was with a small group that met with EPA Regional Administrator, Dennis McLerran, and his staff to discuss possible 404c action concerning proposed mining development in the headwaters of two major salmon rivers in the area." [Ex. 80]

Mr. Waldrop's brief description of his meeting with McLerran was emblematic of the way EPA and ENGOs were coming to cooperate – private meetings between a small group of ENGO 404(c) advocates and a small group of EPA policy makers with the power to grant their 404(c) request. Meetings like the one Waldrop described would grow in frequency and intensity – all one-sided, all out of the public eye and generally unknown to any other interested parties such as Pebble, the State of Alaska, local governments and anyone with a contrary view.

Like Parker and Brown, Mr. Waldrop kept information flowing to EPA. And like many of these messages, EPA redacted the recipient. For example, on October 20, 2010, Waldrop wrote a redacted recipient with this subject line: "Bristol Bay Commercial Fishing request to initiate 404c of CWA." Waldrop's email said: "If we can help deepen your understanding of the fishery or of the region as a whole, please let us know." [Ex. 81]

On February 7, 2011, after EPA announced its plans for the watershed assessment, Mr. Waldrop wrote an appreciative email to someone in EPA (the name was redacted). "Thanks for your role in crafting and getting this issue to front and center." Waldrop also asked for advice on how to connect with McLerran in Anchorage, where he was speaking at the Alaska Forum on the Environment on February 8, "so I and a native leader (not a crowd) may look him in the eye and say 'thank you.'" [Ex. 82]

14. Wayne Nastri, Lobbyist

By the fall of 2010, lobbyist Wayne Nastri, who was the EPA Region 9 Administrator until 2009, was working for many of the 404(c) advocates and getting them inside the doors at EPA.

There are an enormous number of emails to and from and referring to Mr. Nastri in the FOIA record production. Many are repetitive because he would send almost identical individual emails to EPA officials to set up separate meetings. He became a constant presence in the EPA

process and his stable of activists came to include Brown, Waldrop, former state legislator Rick Halford, Parker's tribal clients, NRDC lawyer Joel Reynolds, and others.

Mr. Nastri's voluminous communications make it appear that he got every audience he requested, whenever he asked for it, and for whomever he had in tow to advocate for a section 404(c) veto. Nastri obtained special access for anti-mine activists, fostering their special relationship with EPA that was afforded only to the mine opponents.

For example, on September 3, 2010 Mr. Nastri sent Mr. McLerran the following email. "As you know the broad-based coalition [Nastri's clients] concerned about Pebble mine will be in Washington, DC Sept. 21-23 and is hoping to meet with several people at USEPA including Pete Silva, Michelle DePass, Bob Sussman, Scott Fulton, and Bob Perciasepe. I want to make sure you know about this as I will be requesting the meetings early next week. I want to check in with you and see if you have any concerns. I am aware that many of the stakeholders have spoken with you and the Administrator and the last thing I want to do is put you in an uncomfortable position." [Ex. 83]

Mr. McLerran replied: "Wayne: thanks for the heads up on this. Your timing on this is good. We are very actively discussing this issue at the moment so talking to headquarters folks is very timely."

Mr. Nastri then worked on arranging for meetings in Washington, D.C. The response, from Bob Sussman, senior policy counsel to the Administrator, set the tone: "Hi Wayne. Of course, I remember you from your RA days. We would be happy to meet with the coalition. I'd like to line up representatives of OW and OGC to join the meeting and to have R10 participation by phone." [Ex. 84]

Mr. Nastri was also setting up separate, individual meeting with top EPA officials. Afterwards, Nastri went back to McLerran for a debriefing. [Ex. 85] By the end of year, Nastri was setting up more meetings, and he had added another ENGO client, The Nature Conservancy. [Ex. 86]

On February 2, 2011, Mr. Nastri arranged a technical briefing for EPA's Watershed Assessment team. The briefing Nastri arranged was by two more former EPA colleagues he enlisted: William M. Riley and Thomas G. Yocom. Mr. Riley retired from EPA in 2007, after working on environmental assessment, wetlands, mining and aquatic resources in Region 10. Mr. Yocom retired from EPA in 2005 and also worked for the U.S. Fish and Wildlife Service. They became permanent and regular players in the 404(c) process from that point forward, with Nastri making arrangements.

On February 7, 2011, Mr. McLerran notified Mr. Nastri (among others) by email of the Bristol Bay Watershed Assessment, sending along the press release and an outline for the assessment. [Ex. 87] One week later, on February 14, 2011, Nastri arranged two science briefings for EPA. Nastri, Brown and Waldrop attended both. [Ex. 88]

On May 31, 2011, Mr. Nastri helped prepare Mr. McLerran for a trip to Bristol Bay. "I just want to wish you a safe and productive trip as you visit the Bristol Bay area. Also, I know you will be well-briefed and prepared to answer many questions. Here are some questions though that you may be asked in your meetings." [Ex. 89]

Mr. Nastri's questions -- How long will it take EPA to reach its decision? What comes after the assessment? What is necessary for EPA to make a finding sufficient to trigger a 404(c) action? and others -- were posed just as if he were McLerran's assistant. And McLerran thanked him in the same vein: "This is helpful for our presentation."

Mr. Nastri continued to set up countless briefings and connect with EPA and ENGO representatives. An email exchange between Mr. Nastri and Mr. Sussman on March 9, 2012, might be typical for summing up their relationship. Nastri told Sussman: "Thank you for taking the time to meet with representatives of the Bristol Bay Native Association, Bristol Bay Native Corporation and Trout Unlimited yesterday afternoon. As we mentioned, we are very appreciative of all the work the Agency is doing for Bristol Bay and it's [sic] residents."

Mr. Nastri said, "We will continue to work to support the Agency's effort by providing technical information, where possible and appropriate, and through our continued outreach to local state and federal stakeholders. We will also continue to keep you apprised of our efforts."

Mr. Sussman's reply: "Wayne. Pleasure to work with you on this." [Ex. 90]

15. ENGOS Inside EPA Headquarters With Nancy Stoner

One of the leading ENGOS fighting the Pebble project is the Natural Resources Defense Council. NRDC had an inside connection and ally at EPA headquarters, Nancy Stoner, Deputy Assistant Administrator for Water. For many years she was a senior attorney at NRDC and ran the water program there. Just a few months after Ms. Stoner went to EPA, her former colleagues at NRDC were at her door advocating 404(c) action. NRDC and EPA were actively engaged throughout the summer of 2010, according to FOIA records. These records show no such NRDC-EPA activity prior to this. *Only after Stoner was installed at EPA headquarters did NRDC move in to position at EPA.*

Most significantly, Ms. Stoner appeared to circumvent a ban on meeting with her prior employer by adding others to the anti-Pebble NRDC meetings. When NRDC attorney Joel Reynolds on June 14, 2010, asked Stoner for a 404(c) meeting, she replied, "I am not supposed to set up meetings with NRDC staff, but can attend such a meeting if there are enough others in attendance." [Ex. 91]

In requesting a meeting, Reynolds told Ms. Stoner that Shoren Brown of Trout Unlimited would be the lead contact, thus smoothing the way for what would appear to become Ms. Stoner's open-door policy in welcoming the ENGOS to EPA. More than a mere open door-policy, Stoner herself invited anti-Pebble ENGOS to meet. On July 21, 2010, she invited Jan

Goldman-Carter of the National Wildlife Federation to join a meeting she had scheduled with Trout Unlimited. [Ex. 92] The meeting took place in Stoner's office on July 23. [Ex. 93]

Ms. Stoner and Goldman-Carter, Wetlands and Water Resources Counsel at the NWF National Advocacy Center, clearly had a close working relationship and Bristol Bay 404(c) issue was part of it. On August 3, 2010, EPA Office of Water Chief of Staff Gregory Peck wrote Stoner and two other top EPA officials about a bill introduced by Alaska Congressman Don Young that would strip EPA of its 404(c) powers. Stoner forwarded the email to Goldman-Carter with the message "while I'm thinking about you – fyi." [Ex. 94]

Meanwhile, the NRDC lawyer in Ms. Stoner's old job in the NRDC water program, Jon Devine, on August 5, 2010, initiated contacts between NRDC and other top EPA officials. EPA's Bob Sussman replied, "Happy to set this up, Jon." [Ex. 95]

On September 23, 2010, Ms. Stoner was among a group of top EPA officials meeting to discuss "pre-emptive CWA 404(c) action near Bristol Bay" with Wayne Nastri, Shoren Brown, Bob Waldrop, Rick Halford and several others. [Ex. 96] After the meeting, Mr. Brown asked for -- and was granted -- follow-up time with Ms. Stoner "to discuss upcoming activities we are planning." [Ex. 97]

On October 20, 2010, EPA Water Chief of Staff Peck wrote Stoner that he was setting up a call to discuss Pebble with National Wildlife Federation lawyer Tony Turrini who asked "to hear more about EPA's strategy for dealing with hard rock mining discharges and to discuss ways in which we can support effort." [Ex. 98]

With Shoren Brown often acting as front man for the ENGOS, Ms. Stoner was a major player, her attendance required by EPA and sometimes even chairing the meetings, such as one on October 25, 2010. [Ex. 99]

Ms. Stoner continued to be a major player, meeting with ENGOS, leading conference calls, such as on March 29, 2011 [Ex. 100] and visiting Alaska.

16. Propaganda Trumps Science: ENGOS Flood EPA with Politics of Persuasion

EPA's stated role was to "conduct a scientific assessment," as it announced on February 7, 2011. Science is supposed to be unbiased, but EPA welcomed a virtual flood of propaganda from anti-mine activists. The ENGOS, between preparing one-sided reports by partisan scientists for EPA-eyes only, and conducting innumerable private briefings for EPA, were flooding EPA with material far removed from science. Trout Unlimited led the non-scientific information onslaught – and EPA fully embraced it.

ENGOS filled EPA inboxes with an incredible array of non-scientific material, a mix of political and partisan advocacy along with news accounts of the anti-Pebble campaign. This

material covered everything from churches to chefs, from jewelers to “jammin’ for salmon” festivals, from the ENGO’s Bristol Bay action plans to bumper sticks opposing Pebble.

Not only did EPA accept, and even invite, this information, EPA often took it upon itself to further distribute this vast trove of ENGO material—including the 404(c) advocates’ press releases—within EPA itself.

On September 14, 2010, TU’s Shoren Brown sent an email to Region 10 Administrator Dennis McLerran called “Here comes the foodies ...” [Ex. 101]

On September 20, 2010, TU’s Shoren Brown sent Mr. North and his Aquatic Resources Unit boss Mr. Szerlog a letter that Tiffany & Co., the jeweler, wrote to EPA opposing Pebble. “Just wanted to make sure it crossed your desks,” Brown wrote. [Ex. 102] (Tiffany & Co. went on to give Trout Unlimited’s Bristol Bay Protection Campaign, which Brown directs, a \$350,000 grant. Tiffany also funded the study that Trout Unlimited provided exclusively to EPA under an embargo until it was released months later.)

On October 25, 2010, Tyler Edgar, Climate and Energy Campaign Manager for the National Council of Churches, sent two items to Brown: a letter opposing Pebble from the churches’ own ENGO, the Eco-Justice Program, to Administrator Lisa Jackson along with a separate resolution from the Russian Orthodox Diocese of Sitka, Anchorage and Alaska. Brown dispatched the items to Ms. Stoner and others at EPA. Stoner in turn forwarded the church statements to additional unknown (redacted) EPA recipients. The churches cite no scientific studies, but urge EPA “to initiate a 404(c) process to ensure protection for God’s Creation and people in Bristol Bay.” [Ex. 103]

“Specifically, we urge you to initiate a 404(c) process as outlined under the Clean Water Act which would outline the impacts of the mine’s waste on the area’s water quality, a vital component of God’s creation, and prevent the use of the Bristol Bay watershed as a dumping ground for toxic mining waste,” the churches’ letter said.

Trout Unlimited considered the undated Russian Orthodox Diocese resolution sufficiently anti-Pebble to make sure it landed at EPA headquarters.

On February 4, 2011, the same Tyler Edgar, who serves as associate director for the church Eco-Justice Program, wrote directly to Phil North and Palmer Hough to inform them of an event in January when Russian Orthodox Bishop Benjamin journeyed from San Francisco to Bristol Bay for a “Blessing of the Waters.” Edgar posted the item on the eco-justice program web site [Ex. 104] as did other anti-Pebble groups. The bishop’s transportation to Bristol Bay was provided by anti-Pebble financier Robert Gillam, who owns nine private planes, and who was wooing the Russian Orthodox Diocese to his cause. It was later revealed that Father Michael Oleksa – the Alaska diocese leader who arranged the visit as he and Gillam courted each

other – had anticipated substantial payback from Gillam in return for the church’s anti-Pebble efforts.⁸

On February 17, 2011, Palmer Hough sent an email to a dozen of his EPA colleagues, saying: “Folks: FYI, in case you have not heard March will be a big communications month for the coalition calling for a 404(c) action in Bristol Bay.” And then he went on to highlight some of the events. [Ex. 105] The ENGOs did not have to work as hard to spread their message and announce their events when EPA officials themselves were doing the job. Moreover, the events had nothing to do with science, but were all about the political efforts of sportsmen, churches, chefs and others to win adherents – and dishing up salmon at receptions.

On March 29, 2011, Trout Unlimited Alaska Director Tim Bristol sent Stoner and other EPA officials a press release and letter from “chefs, restaurateurs and food lovers” urging EPA to use its 404(c) authority to stop Pebble. Twenty restaurants announced they would serve Bristol Bay salmon for one week “demonstrating the culinary value” of the fishery. [Ex. 106]

Trout Unlimited started sending weekly media reports to EPA officials making sure every anti-Pebble article, press release and announcement landed on EPA desks. EPA apparently went to a lot of trouble to protect the recipients from disclosure by redacting names from these emails. However, by simply scrolling to the bottom of the email, one can see the recipient’s name, as in this April 5, 2011 “Bristol Bay Media Round Up” to Nancy Stoner. [Ex. 107] That is often how such mass emailings work, but EPA’s FOIA redaction person must not have been aware of that.

A sampling of other weekly email news from Trout Unlimited – sometimes called “Save Bristol Bay in the News” or simply “Bristol Bay in the News” – include the following: November 8, 2011 to Cara Steiner-Riley [Ex. 108]; November 14, 2011 to Michelle DePass [Ex. 109]; November 21, 2011 to Michael Szerlog [Ex. 110]; December 20, 2011 to Phil North [Ex. 111]; and August 6, 2012, which includes an article about “jammin’ for salmon.” [Ex. 112]. These emails also went to Bob Sussman, Palmer Hough, Julia McCarthy, Bill Dunbar and other EPA officials.

By the end of 2011, so much Trout Unlimited email was pouring into EPA inboxes that servers identified it as “POSSIBLE SPAM” as shown in emails on November 9 and December 6, 2011. [Ex. 113] But the flood continued.

Typically mass emails offer recipients an opportunity to unsubscribe or opt out, and that was true here, as the last page of these mailings indicates. The fact that these EPA officials chose *not* to opt out indicates that they welcomed this regular flow of mostly anti-Pebble news from the Trout Unlimited media machine.

EPA, like many agencies, sends out news relevant to the agency and its employees. EPA had what it called its “E-Clips” service as in this sample from July 28, 2010. EPA also provided

⁸ <http://www.alaskadispatch.com/article/pebble-opposition-finds-religion>

special internal coverage after events such as the February 7, 2011 watershed announcement. [Ex. 114] Apparently, Trout Unlimited did not trust EPA to make sure all the appropriate people received everything Trout Unlimited deemed important, whether it involved science or not. Thus, the Trout Unlimited-EPA weekly service kicked in.

In some cases, EPA officials themselves distributed announcements for Trout Unlimited and other ENGOs. Frequently, they had little or nothing to do with science and lot to do with ENGOs themselves. For example, on April 12, 2012, Palmer Hough emailed a long list of fellow EPA officials with an "Updated letter from Sportsmen for Bristol Bay" supporting the 404(c) action. However, the letter was not much of an update because it was identical to the one sent 14 months earlier (in February 2011). Mr. Hough took it upon himself to send it to more than two dozen EPA officials simply to show the additional signatories. [Ex. 115]

On April 17, 2012, Shoren Brown sent out mass emails reminding EPA officials of the Sportsmen for Bristol Bay reception, such as this message to Ms. Steiner-Riley. [Ex. 116] But EPA got the reminder out first. On April 16, Scott Fraser of EPA's Office of Public Engagement thanked EPA officials for participation in an ENGO event that day and told the EPA headquarters staff, "Tomorrow, the sportsmen are hosting a reception at the Hart Senate Office Building (Room 902) and you are welcome to attend (no RSVP is required)." [Ex. 116] However, this was not a mere reception as the EPA email would indicate. As an April 10, 2012 email from Shoren Brown makes perfectly clear, this was an anti-Pebble event to "talk with prominent Bristol Bay stakeholders from across the country as you learn about the fight to protect Bristol Bay, Alaska and America's hunting and fishing legacy." [Ex. 117] No matter, EPA told its top officials they "are welcome to attend."

Trout Unlimited emails to EPA officials even included an April 10, 2012 email from Shoren Brown – recipient redacted but addressed to "SBB Prospect-588" (SBB referring to Save Bristol Bay) – with the subject line: "Show your support with No Pebble Mine stickers." The email said, "We've got a great opportunity for you to show your support for Bristol Bay and wear it on your sleeve, bumper or wherever else you fancy." [Ex. 118]

Ironically, EPA had been showing its support – privately and internally – for a Bristol Bay 404(c) action for almost four years at that point, going back to North's earliest efforts in 2008 to launch the 404(c) process.

17. Lydia Olympic of The Wilderness Society

The FOIA records produced dozens of emails for 2010 between EPA and various local government officials, including tribal councils, in the Bristol Bay region. Much of the communication was mundane and involved meetings, tours and planning. Some emails have large redactions among the address block. But wherever the addressees are readable, one name stands out: Lydia Olympic, a staff member for The Wilderness Society, not only the sole environmental group representative on the list, but perhaps the only Anchorage resident who regularly received these Bristol Bay emails. [Ex. 119]

Various ENGOs were working closely with EPA by this time, but only The Wilderness Society is included in many of these communications. Of course, Trout Unlimited, the Natural Resources Defense Council and other ENGOs and their principals preferred to work privately through their own well-developed channels. Ms. Olympic would later join some of the group meetings between other ENGOs and EPA.

Ms. Olympic clearly had a special relationship with EPA. She was among a handful of people included in emails from Tami Fordham with the subject line: "EPA Administrator Lisa Jackson Visit to Dillingham – Let's Plan this Together." [Ex. 120]

Ms. Olympic served on the EPA Tribal Operations Committee from 1999 to 2007 and worked on creating a Tribal Mining Advisory Committee. In 2009, EPA Region 10 gave her the Daniel Ellanak Environmental Excellence award for her work. Although she is a former village council member and a former Bristol Bay resident, her work with EPA during this period was as a staffer for Anchorage office of The Wilderness Society, and EPA embraced her participation.

In its annual report for 2010, The Wilderness Society seemed to give Olympic a measure of credit for the EPA decision to conduct a watershed assessment even though that decision was *not announced until 2011*. The 2010 report states: "Lydia Olympic is leading our effort and is building strong public opposition. In response, EPA decided to conduct a watershed analysis to determine the mine's potential impacts." [Ex. 121]

The Wilderness Society report described Olympic's job as educating tribes and federal officials about Pebble's threats to fish. The report describes Olympic as "such a fervent opponent of the mine that she became known as 'the Pebble Rebel with a Cause.'" What makes that sobriquet interesting is that there are some EPA emails that include a recipient called "pebblerebel," sometimes unredacted, sometimes visible through an imperfect redaction. [Ex. 122] "Pebblerebel" obviously held a special insider position with EPA.

Oddly, despite Ms. Olympic's Wilderness Society role in educating federal officials (as the Society described her job) EPA produced no emails at all from Ms. Olympic to EPA.

18. Stark Contrast: EPA treatment of Pebble CEO John Shively

The above discussion illustrates how quickly EPA responded to ENGO requests for meetings, calls, briefings and information. By contrast, consider this exchange between Pebble CEO John Shively and Region 10 Administrator Dennis McLarren.

On January 31, 2011, Mr. Shively wrote McLarren inquiring about the status of the 404(c) petition:

Dear Regional Administrator McLarren:

When we met last month, you suggested I check in with you from time to time to discuss where EPA is with the 404c petition concerning Bristol Bay.

If you have some time this week, perhaps we could set up a call.” [Ex. 123]

Mr. McLerran responds, copying four other top-ranked EPA officials: “I’ll ask my staff to set up a call. I also plan to be at the Alaska Forum next week and perhaps we could talk there too.” McLerran was referring to the annual Alaska Forum on the Environment, which was scheduled for February 7-11, 2011, in Anchorage.

One week later, on February 7, 2011, Mr. Shively again wrote Mr. McLerran: “Dennis, I have not heard back from your staff on whether they want to set up a teleconference this week or a meeting. I am in Anchorage only on Friday.”

Unbeknownst to Mr. Shively, EPA had already made an important decision about Pebble that Mr. Shively had not been told about. On that very day, Monday, February 7, EPA would announce that it was undertaking the 404(c) Bristol Bay Watershed Assessment. The next day, Tuesday, February 8, 2010, McLerran spoke to the Forum. Apparently, the announcement and his speech were geared to the annual event. In the week leading up to this announcement, EPA withheld this information from Mr. Shively. The ENGOs were insiders; Mr. Shively was an outsider who was kept in the dark.

19. EPA Embraced Anti-Pebble ENGOs While Excluding Other Stakeholders

The large, if incomplete, EPA record released under the FOIA request is devoid of any evidence that EPA sought to obtain participation of *pro*-Pebble stakeholders, or even Alaska state agency personnel, in any discussions of the kind described above between EPA and the ENGOs.

ENGOs flooded EPA with emails focusing on the fight against Pebble. ENGOs privately provided EPA with report after report to support their position. None of this information was contemporaneously shared with Pebble or with any other stakeholders. EPA even excluded the landowner—the State of Alaska—until almost the eve of its public announcement as described in the section below.

The countless communications, calls and meetings between EPA and the ENGOs ignore all other stakeholders. The voluminous FOIA production shows that EPA was uninterested in engaging anyone but the anti-Pebble side.

Although EPA answered emails from other stakeholders, it never took steps to include them in its deliberations. In contrast, the anti-Pebble ENGOs were warmly welcomed. EPA demonstrated no inclination to bring balance—or even other viewpoints—to any of the many meetings EPA held with the ENGOs. The record shows they were all one-sided affairs, which speaks volumes about EPA’s own view of its mission.

20. EPA Briefed Alaska on 404(c) Months after Working with ENGOS

While EPA busied itself with the ENGOS in private, it largely ignored the State. After months of working together with ENGOS on the 404(c) process, a November 24, 2010 email shows that EPA had finally set up an “audio-visual conference regarding 404(c) petition” for State officials.

However, this briefing was only about the tribes’ petition, not about EPA’s plan to go down the 404(c) path. What ENGOS had known for months – that EPA was embarking on a 404(c) veto – would not be revealed to the State until January 4, 2011. This was one month before the EPA announcement, but it was 2 ½ years after North initiated the 404(c) process and long after ENGOS were brought into the private EPA planning process.

On January 4, 2011, EPA Pebble project manager Richard Parkin emailed the Alaska Commissioner of the Department of Environmental Conservation Larry Hartig a message with this long, cautionary subject line: “Confidential *** Draft Outline of a Bristol Bay Process to inform EPA’s decision whether to invoke 404(c) *** please don’t distribute.”

“I am sharing this with you before any other partners,” Mr. Parkin said, even though EPA had already briefed many ENGOS, the FWS, and the NPS, about the 404(c) process. “Please ensure that it is not distributed. At this time it is too vulnerable to misinterpretation and speculation.” So while EPA seemed to be comfortable sharing *everything* with ENGOS, it was very careful about sharing *anything* with anyone outside its inner circle—even the State of Alaska.

Mr. Parkin said EPA wanted to work with the State “to ensure that the proper information is reviewed and that the partners and stakeholders have an opportunity for meaningful involvement.” Parkin did not reveal that EPA had long been working with anti-Pebble ENGOS and reviewing information from *them* to the exclusion of input from any other stakeholders, including the State.

Mr. Parkin followed up with Mr. Hartig by phone and later emailed him with permission from McLerran “to share the outline with your state counterparts.” The record reveals nothing more about this EPA-State contact.

Conclusion

The foregoing review of the heavily redacted and incomplete set of emails produced by EPA provides a wider glimpse of how EPA privately engaged in a close working relationship with avowed Pebble opponents to develop a veto strategy. This review provides more evidence that the Final Assessment was written to justify a predetermined goal: a preemptive veto of the Pebble Project.

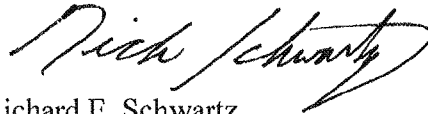
A biased report and biased process violate the Information Quality Act (“IQA”) and the OMB and EPA guidelines promulgated pursuant thereto. Section 515 of the IQA directs federal agencies to maximize “the quality, objectivity, utility, and integrity” of the information they

Arthur A. Elkins, Jr. (2410T)
February 19, 2014
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create, collect, and disseminate. 44 U.S.C. § 3516 note. According to the OMB guidelines, "objectivity" requires disseminated information to be "unbiased." Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8453 (Feb. 22, 2002).

The Pebble Project is among the most significant mineral deposits ever discovered. EPA has long been secretly developing its strategy for preventing this deposit from providing the jobs and other economic benefits it is capable of producing. We ask you to investigate this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Schwartz", with a stylized flourish at the end.

Richard E. Schwartz
Attorney for Northern Dynasty Minerals Ltd.